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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N.W.

Washington, D.C. 20536

FILE: [REDACTED]
EAC 00 244 52120

Office: Vermont Service Center

Date: SEP 25 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

5ep2503.02B9204

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, and the order of the AAO will be affirmed.

The petitioner is a native and citizen of Nigeria who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner failed to establish that he: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E); and (2) entered into the marriage to the citizen or lawful permanent resident in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on February 15, 2002.

On motion, counsel asserts that the constant insults of the petitioner by his wife, using him for financial gain, ruining his adjustment interview, and abandoning him may not be considered extreme for some, but to the petitioner, as a Nigerian man, this type of treatment from a wife is certainly considered extreme and even abominable. Citing *Matter of Soltan*, "A... (BIA June 11, 2001)," counsel states that the Board of Immigration Appeals (BIA) found inadequate evidence to sustain the denial of a visa petition based on allegations of a prior marriage fraud. Counsel further cites *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990), and 8 C.F.R. § 204.2(a)(1)(ii), and asserts that the burden falls upon the government to provide "substantial and probative" evidence that the petitioner's marriage was a sham. He contends that the petitioner submitted substantial proof that he entered into the marriage in good faith, and that if the evidence submitted establishes that the couple lived together, it should follow that the intent of the petitioner was to establish a life together.

8 C.F.R. § 103.5(a)(3) states:

Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to

reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. § 3.2(g) states:

Decisions of the Board as precedents. Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service or immigration judges in the administration of the Act. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board *en banc* may be designated to serve as precedents in all proceedings involving the same issue or issues.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

A review of the record reflects that the director, in his decision, reviewed and discussed the evidence furnished by the petitioner to establish that he qualified for the benefit sought, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E) and 8 C.F.R. § 204.2(c)(1)(i)(H). The AAO also reviewed all the evidence furnished and concurred with the director's conclusion that the petitioner failed to establish that he qualified for the benefit sought.

While counsel, on motion, asserts that the petitioner was a victim of extreme cruelty, pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. Counsel failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Nor did he support his motion by any pertinent precedent decision(s) to establish that the director's and the AAO's decisions were based on an incorrect application of law or Service policy. The motion, therefore, does not meet the criteria for a motion to reconsider.

To establish that the petitioner entered into the marriage to the citizen in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H), counsel cites *Matter of Soltan, supra*, and states that the BIA found inadequate evidence to sustain the denial of a visa petition based on allegations of a prior marriage fraud. Counsel further cites *Matter of Tawfik, supra*, and 8 C.F.R. § 204.2(a)(1)(ii), and asserts that it is the burden of the Service to provide substantial and probative evidence that the petitioner's marriage was a sham.

The Service, in this case, did not find the petitioner's marriage to the U.S. citizen to be a sham. Rather, it was found that the petitioner failed to submit additional evidence, as had been requested, to establish that the petitioner entered into the marriage in good faith. Furthermore, there is no indication that *Matter of Soltan, supra*, has been declared a precedent decision and, therefore, is not binding on the AAO.

Additionally, as provided in 8 C.F.R. § 204.2(c)(6)(iv), the fact that the Service determined that the petitioner has made a "prima facie case," (a) shall not be considered evidence in support of the petition; (b) shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and (c) shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of 8 C.F.R. § 204.2(c)(2).

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed. The decision of the AAO dated February 15, 2002, is affirmed.